IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 243 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 Yes
2 to 5 No

PIPUSHKUMAR O DESAI
Versus
COMMISSIONER OF INCOME TAX

Appearance:
MR JP SHAH for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.R.DAVE

Date of decision: 10/08/2000

ORAL JUDGEMENT

(per A.R. Dave, J.)

At the instance of the assessee, the following three questions have been referred to this court for its opinion, by the Income Tax Appellate Tribunal Ahmedabad Bench 'B' under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the addition of Rs. 12,728/- as unexplained investment of the assessee in part value of ornaments appearing at Sr. No. 10 of the panchnama?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the contents of the seized papers at pages 63 to 70 of the paper book do not in any manner establish that it represents the papers relating to acquisition of the same items of ornaments which re mentioned at Sr. No. 101?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the general explanation as to the source as explainable from the cash flow charts cannot be accepted in the absence of some precise details abut the withdrawals made in the proximity of that period?"

2. The facts giving rise to the present reference application, in a nutshell, are as under:-

2.1 A search was conducted at the residence of the assessee on 22.11.83. During the course of the search, cash and jewellery were found, out of which part of the jewellery had been seized. The Assessing Officer came to the conclusion that the assessee was found to be the owner of jewellery worth Rs. 66,432/- during the Assessment Year in question, which was not recorded in the books of account and as the assessee could not offer any explanation about the nature and source of acquisition of the said jewellery, the value of the said jewellery was deemed to be the income of the assessee for the said assessment year as per the provisions of sec. 69A of the Act.

2.2 Being aggrieved by the said finding, the assessee

had filed an appeal before the CIT (Appeals). The said appeal was not accepted so far as the question with regard to the said jewellery was concerned.

2.3 Being aggrieved by the order of the CIT (Appeals), the assessee had approached the Tribunal by filing an appeal. In the appeal, the Tribunal was pleased to reduce the said amount from Rs. 66,432/- to Rs. 12,728/-. Thus, the said amount was deemed to be the income of the assesee under the provisions of sec. 69A of the Act.

3. Learned advocate Shri J.P. Shah appearing for the assessee has submitted that, though sufficient explanation was offered to the department at the time when the search was carried out and thereafter by producing before the concerned authority details with regard to the inflow of cash from which the jewellery in question had been purchased by the assessee, the Tribunal did not consider the explanation offered by the assessee and did not look into the record giving details with regard to the sources and the Tribunal had wrongly added the value of the said jewellery in the income of the assessee as per the provisions of sec. 69A of the Act.

4. It has been submitted by him that the question revolves around Item No. 101 forming part of the panchnama which deals with "2 rai ful, one pair of butti with jadtar" which was valued at Rs. 18,500/- at the time of the search. It has been submitted by him that though sufficient details with regard to the source from which the said jewellery were purchased were given, the Tribunal did not consider the same and added the value of the jewellery worth Rs. 12,728/- in the hands of the assessee under the provisions of sec. 69A of the Act. Learned advocate Shri Shah has taken us through several documents giving details with regard to the explanation offered by the assessee. The said documents were not considered by the Tribunal while deciding the appeal. Shri Shah has drawn our attention to page 124 of the present paper-book stating that in the month of Oct. 1983, the assessee had spent the following amounts for the purpose of purchase of the jewellery referred to hereinabove, which was valued at Rs. 18,500/-.

Rs. 10,000 paid in cash
Rs. 3,500 paid to Shri Hiralal Soni
Rs. 2,000 paid to Shri Pravinbhai Zaveri
Rs. 200 paid to Shri Rasikbhai Babulal
Rs. 6,500 paid to Shri Pravinbhai Zaveri
Rs. 175 paid as per a Note

Thus, according to him, a sum of Rs. 22,375/- was paid for the purchase of the jewellery in question and therefore by no stretch of imagination, it could have been said that the source from which the jewellery was purchased was not explained by the assessee. It has been submitted by him that while discussing the issue with regard to inclusion of the said amount in the income of the assessee, the Tribunal has observed that, from the seized papers nothing had been found to show that the jewellery referred to hereinabove had been acquired from the sources explained by the assessee. He has further submitted that the Tribunal had not relied upon the cash flow statement which was submitted by the assessee after the search on the ground that the said cash statement was prepared afterwards.

5. It has been submitted by learned advocate Shri Shah that the cash flow statement, which was submitted by the assessee to the revenue, was prepared subsequently because at the given point of time the assessee was not maintaining regular books of account pertaining to his household expenditure. In the circumstances, with the help of books of account pertaining to the business and from the vouchers which were available with the assessee, the assessee had prepared a statement giving details with regard to inflow of cash and expenditure incurred by the assessee and his family members from period commencing from 21st October 1979 till the date of the search and in the said statement he had referred to all the entries whereby cash was withdrawn from bank or from business by all his family members for the purpose of incurring household expenditure and purchasing jewellery etc. He has submitted that the statement denoted that the assessee was having sufficient funds at the time when the assessee's daughter Mamta was to marry and from the funds available, the jewellery in question had been purchased. According to learned advocate Shri J.P. Shah, the Tribunal had committed serious jurisdictional error by not looking at the documents which were absolutely relevant for the purpose of determining the issue before the Tribunal.

6. It has been further submitted by him that by not looking at the relevant documents the Tribunal had seriously erred in exercise of its jurisdiction and had materially erred in coming to the conclusion that a sum of Rs. 12,728/- should be added to the income of the assessee as per the provisions of sec. 69A of the Act.

7. On the other hand, learned advocate Shri Naik has tried to support the order passed by the Tribunal and has submitted that the assessee had not given specific details with regard to the amount spent by the assessee during the period commencing from 21.10.79. According to him, the assessee had not withdrawn substantial amount at the time when the marriage of the assessee's daughter was to take place. According to him, the Tribunal had rightly not considered the statement giving details with regard to cash inflow for the reason that the said statement was prepared after the search operations were concluded.

8. We have heard the learned advocates and have duly considered the facts and circumstances in which the Tribunal had added a sum of Rs. 12,728/- in the income of the assessee as per the provisions of sec. 69A of the Act.

9. Upon perusal of the relevant record, copies of which have been annexed to the paper book supplied to this court, it is very clear that the assessee had given sufficient details with regard to the sources from which he had purchased the jewellery in question. Upon perusal of the statement giving details with regard to cash inflow, it is very clear that in the beginning of October 1983, the family of the assessee was having cash balance of Rs. 39,939/- and even during the month of October 83 approximately Rs. 20,000/- were received by the family members either from the bank or from the business; and from other sources, the family members had received approx. Rs. 13,000/-. As the family was having sufficient cash at its disposal, the assessee or the family members did not think it proper to withdraw further cash from the business or from the bank for the purpose of purchase of the jewellery in question. It also appears to be a fact that the assessee and his family had sufficient funds so as to enable the family to purchase the jewellery in question, estimated cost of which is Rs. 18,000/-.

10. Upon perusal of the order passed by the Tribunal, it is very clear that the statement and documents referred to hereinabove were not taken into account by the Tribunal at the time of deciding the appeal. By not taking into account the relevant documents in the nature of receipts issued by the persons who had done labour work or had supplied gold for the purpose of purchase of the jewellery in question, the Tribunal had erroneously exercised its jurisdiction. We are of the view that the Tribunal ought not to have disregarded the statement

giving details of cash inflow by observing that the said statement was prepared after the search proceedings had been concluded. Such a statement could have been prepared only after the conclusion of the search because at the relevant time the assessee was not having complete details with regard to the receipts and his household expenditure as he was not maintaining books of account for his household expenses. Had the Tribunal looked into the statement submitted by the assessee, the Tribunal could have surely found that the family was having sufficient cash and there was a possibility that the assessee could have very well purchased the jewellery in question, which was valued at Rs. 18,500/- at the time of search, from the cash which was available with the assessee and his family members at the relevant time. In our opinion, the Tribunal ought to have considered the said statement. It was open to the Tribunal not to agree with the said statement if the statement was found to be incorrect or unreasonable, but, in the instant case, without making any comment on the genuineness or otherwise of the statement, the Tribunal simply ignored the said statement.

11. In view of the fact that all the three questions are interconnected and they mainly depend upon the reading of the documents, in our opinion, the Tribunal ought not to have added Rs. 12,728/- in the income of the assessee by ignoring the contents of the statement submitted by the assessee.

12. In the circumstances, we answer the questions in the negative, i.e., in favour of the assessee and against the revenue. The Reference stands disposed of accordingly with no order as to costs.

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(R.K. Abichandani, J.)

(A.R. Dave, J.)

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